

# The Arkansas Register



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**Secretary of State**  
**State Capitol, Room 026**  
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# THE ARKANSAS REGISTER

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# ATTORNEY GENERAL OPINIONS

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## Opinion No.: 2005-083

Higginbotham, Steve  
*State Senator*

**RE:**In light of the recent consolidation of the cities of Helena and West Helena, will the newly consolidated city be able to keep two district judges now in place in each city or will it be reduced to one? Q2) If it is reduced to one, which one will remain in place? ANSWER: The two district judgeships remain in place, rendering the second question moot. See A.C.A. 16-17-917 (establishing the Phillips County District Court with two departments) and 16-17-901 (defining "department" as the physical location where sessions of court are held).

## Opinion No.: 2005-087

Broadway, Shane  
*State Senator*

**RE:**May an Arkansas city of the first class lawfully adopt an ordinance and enter a contract with a private corporation for the collection of user fees from insurance companies for the delivery of fire and police department services? RESPONSE: In all likelihood "no." See opinion for full analysis.

## Opinion No.: 2005-093

Davis, Brent  
*Pros Att'y, 2nd Judicial Circuit*

**RE:**Does the emergency clause set forth in section 2 of Act 1151(the Local Option Horse Racing and Greyhound Racing Electronic Games of Skill Act) set forth facts which establish a current emergency so as to make such clause valid? Q2) Is it a violation of the Arkansas Constitution and/or an impermissible delegation of legislative authority, to grant the power to choose within which political subdivision, i.e., city, town or county, the election is to be held, to the sole

discretion of the "franchise holder," as is set forth in ACA 23-113-201(a)(2)? ANSWER: Q1) The emergency clause failed to pass. Q2) No. When 23-113-201 is placed in context and the act is considered as a whole, the presumption of constitutionality prevails. See Opinion for discussion.

## Opinion No.: 2005-099

Lavery, Randy  
*State Senator*

**RE:** Are there any state laws or state agency regulations that govern the management or mismanagement of non-real estate escrow accounts? RESPONSE: I am unable to determine the nature of the escrow account from the information that has been provided to me. While I have not found any applicable regulations or laws governing the administration of an escrow account of the type you describe, I do note that the contract creating the escrow account is subject to the general law of contract, and a private attorney may be able to advise your constituent on the proper course of action.

## Opinion No.: 2005-102

George, Nathan V.  
*State Representative*

**RE:**Q1) Is it permissible to erect a [publicly funded] Civil War monument on private land? Q2) How far off the highway is the right of way? RESPONSE: With respect to your first question, I am unable to opine on whether public funds may be permissibly expended to erect a Civil War monument because such a determination will require a factual analysis of the attendant circumstances for which this office is neither authorized nor equipped. With respect to your second question, right of way distances are determined on a case by case basis and I recommend contacting the Arkansas Highway and Transportation Department Right of Way Division regarding the specific portion of the highway at issue.

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# ATTORNEY GENERAL OPINIONS

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## Opinion No.: 2005-105

Broadway, Shane  
*State Senator*

**RE:**Pursuant to provisions of Act 2133 of 2005, does the union or professional association have to be recognized by the municipality as representing the employee for benefit or wage negotiations, or does a municipality have to deduct membership fees of any and all professional associations that an employee might want to belong to and subsequently have their membership fees withheld from their salary? **RESPONSE:** In my opinion, a municipality must deduct the membership dues for any union or professional association of which a full-time municipal employee is a member if the employee has in writing requested the municipality to withhold the membership dues from his or her paycheck.

## Opinion No.: 2005-106

Nisbet, A. Wyckcliff  
*Friday Eldredge & Clark*

**RE:**Request for approval of an amendment to the interlocal cooperation agreement between the cities of Little Rock and North Little Rock, Pulaski County, Central Arkansas Water, Little Rock Wastewater and NLR Wastewater to establish the Pulaski Area Regional Geographic Information System ("Pagis"). **RESPONSE:** My review indicates that the agreement is in proper form and compatible with the laws of this state, and is approved.

## Opinion No.: 2005-115

Laverty, Randy  
*State Senator*

**RE:**In light of the provisions of Act 1452 of 2005, as codified at A.C.A. § 6-20-604, can the Department of Education legally continue to send isolated school funds to school districts based on prior-year average

daily membership figures even if the school in question has been completely or partly closed? **RESPONSE:** The answer to this question is "no" if the isolated school has been closed, see A.C.A. 6-20-604(h); "no" for the year in which an isolated school has been partially closed, see id.; and "yes" for any year subsequent to the year in which an isolated school has been partially closed, see A.C.A. 6-20-603(b).

## Opinion No.: 2005-118

Norton, James  
*State Representative*

**RE:**What is the extent and scope of Executive Order 05-04? Q2) What state and federal laws are applicable to economic impact analysis? **RESPONSE:** With respect to your first question, as I recently opined, the extent and scope of EO 05-04 is to require every agency as defined in the EO to complete an economic impact analysis with respect to small businesses for all rules and regulations promulgated under A.C.A. 25-15-204 (Supp. 2003) after the effective date of the EO. With respect to your second question, I am unable to offer an opinion because of the vague and imprecise nature of your inquiry.

## Opinion No.: 2005-122

Jeffress, Jimmy  
*State Senator*

**RE:**Considering current law and the effective date of Act 1397 of 2005, is it possible for a local school board of directors to close an isolated school or parts thereof prior to August 12, 2005? Q2) If the answer to Q1 is in the affirmative, what type of local board action, if any, is required in order for a school district to be deemed to have "closed" an isolated school or part thereof for purposes of Act 1452? Q3) Can the McGehee School District reutilize the grade 7-12 grade span that was not utilized at the Arkansas City campus during the 2004-05 school year and, thus, be en-

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# ATTORNEY GENERAL OPINIONS

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titled to Isolated Funding for students attending those reutilized grade spans for that isolated school? Q4) For the purpose of Isolated Funding pursuant to A.C.A. 6-20-602 and Act 1452, does the term “average daily membership” include only those students that reside within the isolated school area (i.e., the former Arkansas City School District boundary lines) or does the term also include any students from other areas of the McGehee School District that are assigned to the Arkansas City school campus for any particular grade or special educational program? Q5) Is the Arkansas City isolated school area entitled to receive Isolated Funding for students attending a special needs program such as an ALE program or is the school only entitled to per student isolated funding for students attending traditional K-12 grades at Arkansas City? Q6) For purposes of special needs funding pursuant to Act 1452, are school districts required to show full compliance with the Arkansas Standards of Accreditation (see 6-15-202) as required in 6-20-601(b)(3)? RESPONSE: Q1) In my opinion, although the law on this question is not entirely clear, see A.C.A. 6-20-602(b) and 6-13-1603(f), the answer to your first question is, in all likelihood, “no.” Q2) This question is moot in light of my response to your first question. If the McGehee School District reopens grades 7-12 at the Arkansas City campus and continues to meet the criteria for isolated-school status, it will be entitled to include the additional students in average daily membership computations for the purpose of determining isolated school funding. However, it may do so only in the year following the expansion of service. See A.C.A. 6-20-603(b). Q3) The term “average daily membership” refers to any students formally registered in grades K-12, irrespective of where they reside. See A.C.A. 6-13-1601. Q5) So long as a student enrolled in a special-needs program is also classified as enrolled in any one of grades K-12, the isolated school area may include that student in average daily membership for purposes of computing both isolated funding and special-needs funding. I consider it immaterial whether the student’s education is characterized as “traditional” or “nontraditional.” Q6) Yes. See A.C.A. 6-20-601(b)(3) and Act 2005, No. 1452.

## Opinion No.: 2005-127

Altes, Denny  
*State Senator*

**RE:** If the provisions of HJR 1003 were to become effective, would bingo and raffles conducted pursuant to the proposed amendment be legal? Q2) Would the conduct of such bingo and raffle endeavors still be illegal due to the criminal laws set forth at ACA 5-66-101 through -119? Q3) Would the Legislature have to amend the existing criminal statutes regarding gambling in order to legalize charitable bingo and raffles? RESPONSE: Declined to issue an opinion due to the pending election on the question and the absence of any forum for challenging an advisory opinion on the matter. Reference suggested to Section 1 of the HJR.

## Opinion No.: 2005-128

Ormond, Charles L.  
*State Representative*

**RE:** Request for certification of the popular name and ballot title for a proposed constitutional amendment to create a state commission on lotteries and wagering to operate charitable bingo, lottery games and wagering, and for other purposes. RESPONSE: Rejected due to ambiguities in the text of the proposed measure.

## Opinion No.: 2005-131

Jessup, Datus  
*LR City Employee*

**RE:** Is the decision of the custodian of records to release Mr. Jessup’s application with exempt and personal information removed in response to a Freedom of Information Act request consistent with provisions of the FOIA? RESPONSE: Yes.

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# ATTORNEY GENERAL OPINIONS

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## Opinion No.: 2005-140

Borhauer, Shirley  
*State Representative*

**RE:** Are the attached petition cover sheet and sample petition signature page in proper form according to the provisions of Act 1237 of 2005? **RESPONSE:** The Attorney General is not invested with the power to approve or certify the sufficiency of such petitions. This duty is entrusted to the county judge. As a state statutory matter, however, it appears that the attached cover sheet and signature page contain the required statutory elements listed in the new act. The formal, completed petition, however, will be subject to the review and independent determination of the county judge.

## Opinion No.: 2005-146

Fowler, Bessie  
*Organizer*

**RE;** Is the decision of the City of Pine Bluff to withhold the home telephone (phone) numbers of all city employees in response to a request under the Freedom of Information Act (FOIA) consistent with provisions of the FOIA? **ANSWER:** No, because no determination was made regarding the existence of specialized facts supporting the decision not to disclose a listed home phone number.



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# ADOPTED RULES AND REGULATIONS

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## ARKANSAS TEACHER RETIREMENT SYSTEM

Docket No: 088.00.05-002F  
Effective Date: 08/14/2005  
Contact Julie Cabe  
Telephone: 501-682-1836

**Rule Sections: (6-1-1-A), (6-2-1), (7-1-1), (7-2-1), (7-3-1), (6-10-1), (7-4-1), (2-2-1), (8-2-1), (8-10-1), (8-14-1), (8-17-1), (9-3-1), (9-5-1), (9-6-1), (10-3-1), (11-5-1), (12-1-1)**

Docket No: 088.00.05-003F  
Effective Date: 08/14/2005  
Contact Julie Cabe  
Telephone: 501-682-1836

**Conditions Under Which a Retirant May Return to Covered Service Without Rescinding Retirement (10-2-1)**

## BOARD OF CHIROPRACTIC EXAMINERS

Docket No: 029.00.05-001F  
Effective Date: 07/30/2005  
Contact Carol Ann Stone  
Telephone: 501-682-9015

**Part Two: Advertising By Chiropractic Physicians - 9) Telephone Communication**

## ETHICS COMMISSION

Docket No: 153.00.05-002F  
Effective Date: 08/12/2005  
Contact Graham Sloan  
Telephone: 501-324-9600

**Changes to the Rules on Campaign Finance & Disclosure**

Docket No: 153.00.05-003F  
Effective Date: 08/12/2005  
Contact Graham Sloan  
Telephone: 501-324-9600

**Changes to Rules on Lobbyist Registration and Reporting**

Docket No: 153.00.05-004F  
Effective Date: 08/12/2005  
Contact Graham Sloan  
Telephone: 501-324-9600

**Changes to Rules of Practice and Procedure**

## GAME AND FISH COMMISSION

Docket No: 002.00.05-008F  
Effective Date: 08/04/2005  
Contact James Goodhart  
Telephone: 501-223-6327

**2005 -2006 Early Migratory Season Approvals; 2005 - 2006 Miscellaneous Code Change Approved**

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# ADOPTED RULES AND REGULATIONS

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## HEALTH DEPARTMENT

### *Pharmacy Services*

Docket No: 007.07.05-001F  
Effective Date: 08/25/2005  
Contact: C. C. Frazier, Jr.  
Telephone: 501-661-2325

### **Rules Pertaining to Controlled Substances**

Docket No: 007.07.05-002F  
Effective Date: 08/25/2005  
Contact: C. C. Frazier, Jr.  
Telephone: 501-661-2325

### **List of Controlled Substances**

## HIGHER EDUCATION

### *Colleges & Universities Plans & Operations*

Docket No: 008.02.05-001F  
Effective Date: 8/19/2005  
Contact: Thomas Pennington  
Telephone: 479-964-0824

### **2005-2006 Arkansas Tech University Parking and Traffic Regulations**

Docket No: 008.02.05-002F  
Effective Date: 8/25/2005  
Contact: David McKinney  
Telephone: 870-972-2945

### **2005 - 2006 Arkansas State University Parking and Motor Vehicle Regulations**

## HUMAN SERVICES

### *Administrative Services*

Docket No: 016.14.05-009F  
Effective Date: 09/15/2005  
Contact: Joe Franklin  
Telephone: 501-682-9631

### **DHS Policy 1100 - Disposal of Surplus Computer Equipment**

### *Children & Family Services*

Docket No: 016.15.05-001F  
Effective Date: 08/08/2005  
Contact: Vellor Williams  
Telephone: 501-682-8196

### **FSP Manual, CFS-316, CFS-342A, CFS 342B, CFS-344B, CFS-474 and Publications 050 and 357**

### *Medical Services*

Docket No: 016.06.05-043F  
Effective Date: 09/01/2005  
Contact: Dorothy Vance  
Telephone: 501-683-2916

### **Developmental Rehabilitation Services Update Transmittal #14**

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# ADOPTED RULES AND REGULATIONS

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## INSURANCE DEPARTMENT

Docket No: 054.00.05-001E  
Effective Date: 07/28/2005  
Contact: Booth Rand  
Telephone: 501-371-2820

### **Emergency Rule 84: Prepaid Funeral Benefits Contracts Recovery Funds Fees**

## LABOR DEPARTMENT

*Labor Standards Division*

Docket No: 010.14.05-001E  
Effective Date: 08/12/2005  
Contact: Susan Miller  
Telephone: 501-682-4504

### **Emergency Rule 2.501 - Child Labor Regulations**

## LIVESTOCK AND POULTRY COMMISSION

Docket No: 125.00.05-003F  
Effective Date: 08/18/2005  
Contact: Karen Gray  
Telephone: 501-907-2411

### **Arkansas Tuberculosis Regulations**

## PHARMACY BOARD

Docket No: 070.00.05-001F  
Effective Date: 08/12/2005  
Contact: Charles Campbell  
Telephone: 501-682-0190

### **Regulation 04 - General Regulations Regarding Pharmacies**

Docket No: 070.00.05-002F  
Effective Date: 08/12/2005  
Contact: Charles Campbell  
Telephone: 501-682-0190

### **Regulation 05 - Nursing Home Consultants**

Docket No: 070.00.05-003F  
Effective Date: 08/12/2005  
Contact: Charles Campbell  
Telephone: 501-682-0190

### **Regulation 08 - Wholesale Drug Distributors of Legend / Controlled Substances**

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# ADOPTED RULES AND REGULATIONS

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## **SOIL & WATER CONSERVATION COMMISSION**

Docket No: 138.00.05-001F  
Effective Date: 08/05/2005  
Contact Edward Swaim  
Telephone: 501-682-3965

### **Title 19 - Rules Governing the Arkansas Poultry Feeding Operations Registration Program**

Docket No: 138.00.05-002F  
Effective Date: 08/05/2005  
Contact Edward Swaim  
Telephone: 501-682-3965

### **Title 20 - Rules Governing the Arkansas Nutrient Management Planner Certification Program**

Docket No: 138.00.05-003F  
Effective Date: 08/05/2005  
Contact Edward Swaim  
Telephone: 501-682-3965

### **Title 21 - Rules Governing the Arkansas Nutrient Management Applicator Certification Program**

Docket No: 138.00.05-004F  
Effective Date: 08/05/2005  
Contact Edward Swaim  
Telephone: 501-682-3965

### **Title 22 - Rules Governing the Arkansas Soil Nutrient and Poultry Litter Application and Management Program**

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# INSURANCE DEPARTMENT

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**05-015A**

*Consent Order*  
In the Matter of  
**James Cecil Black**

**05-024**

*Order of Continued Suspension*  
In the Matter of the Certificate of Authority of  
**First Continental Life And Accident Insurance Company**

**05-028**

*Order of Suspension*  
In the Matter of the Certificate of Authority of  
**States General Life Insurance Company**

**05-029**

*Order of Continued Suspension*  
In the Matter of the Certificate of Authority of  
**Northwestern National Insurance Company**

**05-030**

*Order of Continued Suspension*  
In the Matter of the Certificate of Authority of  
**American Financial Security Life Insurance Company**

**05-032**

*Order of Cancellation*  
In the Matter of the Certificate of Authority of  
**Statewide Insurance Company**

**05-033**

*Order*  
In the Matter of the Application for Approval of the Acquisition of Control of  
**Usable Life**

**05-034**

*Adoption Order*  
In the Matter of  
**Cosmopolitan Life Insurance Company**

**05-035**

*Order of Suspension*  
In the Matter of the Certificate of Authority of  
**U.S. International Reinsurance Company**

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# ORDERS AND NOTICES

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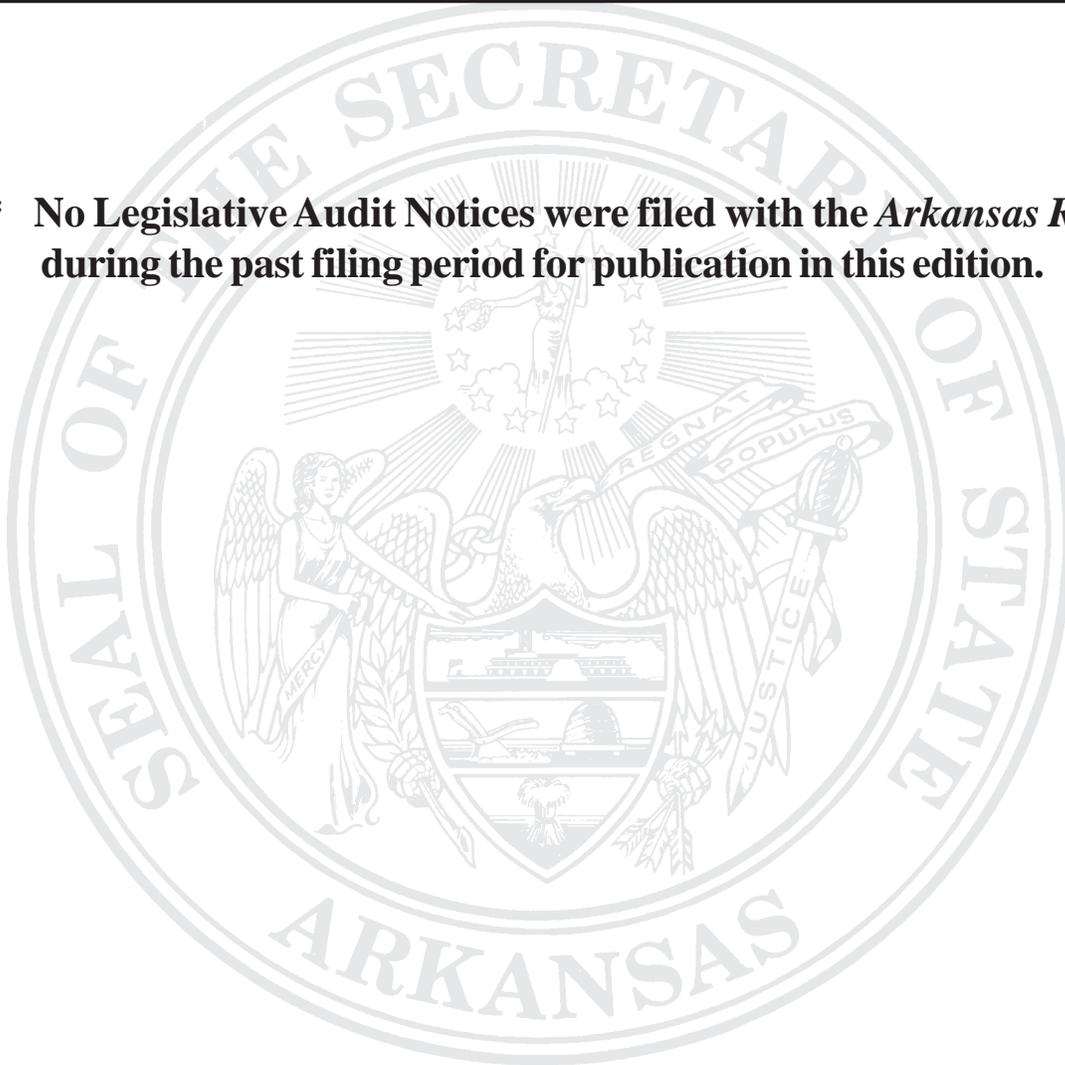
## LEGISLATIVE AUDIT

Agency

Period Covered

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**\*\*\* No Legislative Audit Notices were filed with the *Arkansas Register* during the past filing period for publication in this edition.**



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